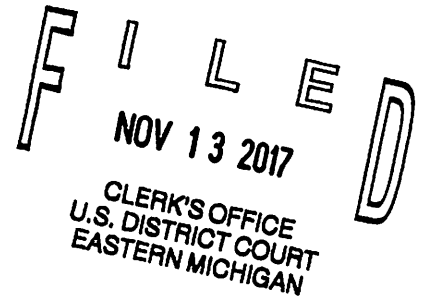


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN



United States of America,

No.

Plaintiff,

Hon.

v.

Brett J. Yenior,

Offense(s):

18 U. S. C. § 2252A(a)(5)

Possession of Child Pornography

Defendant.

Maximum Penalty:

20 years (Count 1)

Maximum Fine:

Not to exceed \$250,000

Mandatory Supervised Release:

Five years and up to life

Rule 11 Plea Agreement

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant
Brett J. Yenior and the government agree as follows:

1. Guilty Plea

A. Count(s) of Conviction

Defendant agrees to waive his right to an indictment and will enter a plea of
guilty to Count One of the Information, which charge(s) him with possession of
child pornography, in violation of 18 U.S.C. § 2252A(a)(5).

B. Elements of Offense(s)

The elements of Count One are as follows:

1. The defendant knowingly possessed child pornography or material containing child pornography.
2. The defendant knew the material contained child pornography.
3. The child pornography had previously been transported in interstate commerce or by a means of interstate commerce, including by a computer.

C. Factual Basis for Guilty Plea

The following facts are a sufficient and accurate basis for defendant's guilty plea(s):

On May 3, 2017, defendant knowingly possessed digital files containing child pornography at his home in the Eastern District of Michigan. That day, police officers executed a search warrant at defendant's home in Burton, Michigan. During the search defendant spoke with law enforcement and stated that he had child pornography on a computer at his home and that he had downloaded the child pornography using a peer-to-peer file-sharing network. Officers seized the computer and several other digital storage devices. A law enforcement officer analyzed the contents of the defendant's computer and digital storage devices and found over 600 images of minor children engaging in sexual explicit conduct.

Some of the child pornography depicted prepubescent minor children. The computer files containing child pornography had been transported using the Internet. The parties agree that on April 5, 2017, defendant used a peer-to-peer file-sharing network to distribute child pornography.

2. Sentencing Guidelines

A. Standard of Proof

The Court will find sentencing factors by a preponderance of the evidence.

B. Agreed Guideline Range

There are no sentencing guideline disputes. Except as provided below, the defendant's guideline range is 51 - 63 months, as set forth on the attached worksheets. If the Court finds:

1. That defendant's criminal history category is higher than reflected on the attached worksheets, or
2. that the offense level should be higher because, after pleading guilty, defendant made any false statement to or withheld information from his probation officer; otherwise demonstrated a lack of acceptance of responsibility for his offense; or obstructed justice or committed any crime,

and if any such finding results in a guideline range higher than 51 - 63 months, the higher guideline range becomes the **agreed range**. However, if the Court finds that

defendant is a career offender, an armed career criminal, or a repeat and dangerous sex offender as defined under the sentencing guidelines or other federal law, and that finding is not already reflected in the attached worksheets, this paragraph does not authorize a corresponding increase in the agreed range.

Neither party may take a position concerning the applicable guidelines that is different than any position of that party as reflected in the attached worksheets, except as necessary to the Court's determination regarding subsections 1) and 2), above.

3. Sentence

The Court will impose a sentence pursuant to 18 U.S.C. § 3553, and in doing so must consider the sentencing guideline range.

A. Imprisonment

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) the sentence of imprisonment in this case may not exceed the top of the sentencing guideline range as determined by Paragraph 2B.

B. Supervised Release

A term of supervised release follows the term of imprisonment. The court must impose a term of supervised release on count five of no less than five years and up to life. The agreement concerning imprisonment described above in Paragraph 3A does not apply to any term of imprisonment that result from any later

revocation of supervised release.

C. Special Assessment

Defendant will pay a special assessment of \$100.00 and must provide the government with a receipt for the payment before sentence is imposed.

D. Fine

There is no agreement as to fines.

E. Restitution

The Court shall order restitution to every identifiable victim of defendant's offense. There is no agreement on restitution. The Court will determine who the victims are and the amounts of restitution they are owed.

F. Forfeiture

As part of this agreement, pursuant to 18 U.S.C. § 2253, defendant agrees to forfeit his interest in the following:

1. Any visual depiction described in 18 U.S.C. §§ 2251, 2251A, or 2252, 2252A, 2252B or 2260, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, or received in violation of these subsections;
2. Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

3. Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense or any property traceable to such property, including, but not limited to:

- A Samsung cellular telephone, Model SM-G955U;
- An Inspiron P496 computer;
- A Samsung SSD 850 EVO;
- A Dell Desktop, Model D16M;
- A Western Digital Hard Drive Model WDC WD10EZEX-75M2NA0;
- A Western Digital Hard Drive Model WDC WD40EZR-00SPEB0;
- A dell Laptop Model P576;
- A Seagate Hard Drive Model ST500LM000-1EJ162;
- A San Disk Mini SD Card;
- A Western Digital External HG, Model My Passport 0748;
- A San Disk Thumb Drive, Model San Disk Ultra; and,
- A Western Digital External HD, Model My Passport 0810.

In entering into this agreement with respect to forfeiture, Defendant expressly waives his right to have a jury determine the forfeitability of his interest in the above-described property as provided by Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure.

In entering into this agreement with respect to forfeiture, Defendant knowingly, voluntarily, and intelligently waives any challenge to the above-described forfeiture based upon the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

Defendant further waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

4. SORNA/Adam Walsh Act

Defendant understands that by pleading guilty in this case, he will be required to register as a sex offender, under both federal and state registration requirements. As a condition of his release from prison on supervised release in this case, defendant will be obligated to promptly register under the federal sex offender registry. Defendant may also be required to register under the law of the state in which he resides, as well as any state where he has significant contacts (including any state where he resides, works, attends school or otherwise has significant contacts). Defendant further understands that he will be required to maintain and

update his registration for at least twenty years, and potentially for the rest of his life.

5. Use of Withdrawn Guilty Plea

If the Court allows defendant to withdraw his guilty plea for a “fair and just reason” pursuant to Fed. R. Crim. P. 11(d)(2)(B), defendant waives his rights under Fed. R. Evid. 410, and the government may use his guilty plea, any statement made under oath at the change-of-plea hearing, and the factual basis statement in this plea agreement, against him in any proceeding.

6. Post Plea-Hearing Custody

Defendant agrees that immediately following his plea hearing, he will be detained pending sentencing in this matter. Defendant consents to detention pursuant to 18 U.S.C. § 3143(a)(2), because the offense alleged in Count One of the Information is a crime of violence within the meaning of the Bail Reform Act. *See* 18 U.S.C. § 3156(a)(4)(c). Defendant agrees to voluntarily submit to detention after the termination of his change of plea hearing, and agrees not to challenge or otherwise contest such detention, including that defendant agrees not to ask the Court to take his guilty plea under advisement.

7. Other Charges

If the Court accepts this agreement, the government will not bring additional charges against defendant based on any of the conduct reflected in the attached worksheets.

8. Each Party's Right to Withdraw from This Agreement

The government may withdraw from this agreement if the Court finds the correct guideline range to be different than is determined by Paragraph 2B.

Defendant may withdraw from this agreement, and may withdraw his guilty plea, if the Court decides to impose a sentence higher than the maximum allowed by Paragraph 3. This is the only reason for which defendant may withdraw from this agreement. The Court shall advise defendant that if he does not withdraw his guilty plea under this circumstance, the Court may impose a sentence greater than the maximum allowed by Paragraph 3.

9. Appeal Waiver

The defendant waives any right he may have to appeal his conviction on any grounds. If the defendant's sentence of imprisonment does not exceed 63 months, the defendant also waives any right he may have to appeal his sentence on any grounds. If the defendant's sentence of imprisonment is at least 51 months, the government waives any right it may have to appeal the defendant's sentence.

Nothing in this waiver bars a claim of ineffective assistance of counsel on appeal or by Collateral Relief under 28 U.S.C. § 2255.

10. Consequences of Withdrawal of Guilty Plea(s) or Vacation of Conviction(s)

If defendant is allowed to withdraw his guilty plea(s) or if any conviction entered pursuant to this agreement is vacated, the Court shall, on the government's request, reinstate any charges that were dismissed as part of this agreement. If additional charges are filed against defendant within six months after the date the order vacating defendant's conviction or allowing him to withdraw his guilty plea(s) becomes final, which charges relate directly or indirectly to the conduct underlying the guilty plea(s) or to any conduct reflected in the attached worksheets, defendant waives his right to challenge the additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

11. Parties to Plea Agreement

Unless otherwise indicated, this agreement does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan.

12. Scope of Plea Agreement

This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. This agreement supersedes all other

promises, representations, understandings and agreements between the parties concerning the subject matter of this plea agreement that were made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government to defendant or to the attorney for the defendant at any time before defendant pleads guilty are binding except to the extent they have been explicitly incorporated into this agreement.

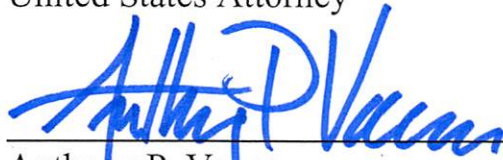
Notwithstanding the previous paragraph, if defendant has entered into a proffer agreement in writing or a cooperation agreement in writing with the government, this plea agreement does not supersede or abrogate the terms of any such prior written agreement.

This agreement also does not prevent any civil or administrative actions against defendant, or any forfeiture claim against any property, by the United States or any other party.

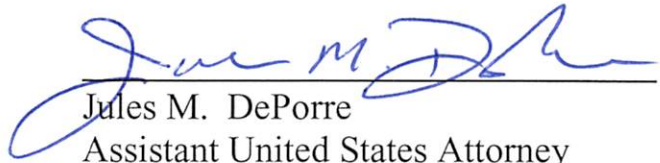
13. **Acceptance of Agreement by Defendant**

This plea offer expires unless it has been received, fully signed, in the Office of the United States Attorney by 5:00 P.M. on 09/15/2017. The government reserves the right to modify or revoke this offer at any time before defendant pleads guilty.

Daniel L. Lemisch
United States Attorney



Anthony P. Vance
Assistant United States Attorney
Chief, Branch Offices

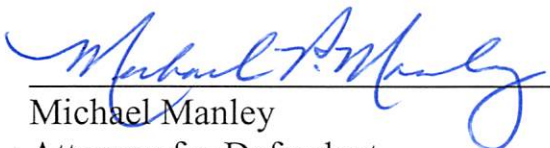


Jules M. DePorre
Assistant United States Attorney

Date: 09/01/2017



By signing below, defendant acknowledges that he has read (or been read) this entire document, understands it, and agrees to its terms. He also acknowledges that he is satisfied with his attorney's advice and representation. Defendant agrees that he has had a full and complete opportunity to confer with his lawyer, and has had all of his questions answered by his lawyer.



Michael Manley
Attorney for Defendant

10/5/17
Date



Brett J. Yenior
Defendant

10-5-17
Date

WORKSHEET A

OFFENSE LEVEL

Defendant Brett J. YeniorDistrict/Office Eastern District of Michigan

Docket Number _____

Count Number(s) 1 U.S. Code Title & Section 18; 2252A(a)(5); _____*Guidelines Manual* Edition Used: 2017 (Note: The Worksheets are keyed to the November 1, 2016 *Guidelines Manual*)

INSTRUCTIONS

Complete a separate Worksheet A for each count of conviction or as required in a situation listed at the bottom of Worksheet B.*
Exceptions: Use only a single Worksheet A where the offense level for a group of closely related counts is based primarily on aggregate value or quantity (see §3D1.2(d)) or where a count of conspiracy, solicitation, or attempt is grouped with a substantive count that was the sole object of the conspiracy, solicitation, or attempt (see §3D1.2(a) & (b)).

1. Offense Level (See Chapter Two)

Enter the applicable base offense level and any specific offense characteristics from Chapter Two and explain the bases for these determinations. Enter the sum in the box provided.

Guideline	Description	Level
2G2.2(a)(1)	Base offense level	18
2G2.2(b)(2)	Material involved a prepubescent minor	2
2G2.2(b)(6)	Defendant used a computer	2
2G2.2(b)(7)	Defendant possessed more than 600 images	5

If the Chapter Two guideline requires application of a cross reference or other reference, an additional Worksheet A may be needed for that analysis. See §1B1.5.

Sum 27

2. Victim-Related Adjustments (See Chapter Three, Part A)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If no adjustment is applicable, enter "0".

§ _____

3. Role in the Offense Adjustments (See Chapter Three, Part B)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If the adjustment reduces the offense level, enter a minus (–) sign in front of the adjustment. If no adjustment is applicable, enter "0".

§ _____

4. Obstruction Adjustments (See Chapter Three, Part C)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If no adjustment is applicable, enter "0".

§ _____

5. Adjusted Offense Level

Enter the sum of Items 1–4. If this Worksheet A does not cover all counts of conviction or situations listed at the bottom of Worksheet B, complete Worksheet B. Otherwise, enter this result on Worksheet D, Item 1.

27

Check here if **all** counts (including situations listed at the bottom of Worksheet B)* are addressed on this one Worksheet A. If so, no Worksheet B is used.



If the defendant has no criminal history, enter "I" here and on Worksheet D, Item 4. No Worksheet C is used.

WORKSHEET D

DETERMINING THE SENTENCE

[Page 1 of 4]

Defendant Brett J. Yenior

Docket Number _____

1. Adjusted Offense Level (From Worksheet A or B)

If Worksheet B is required, enter the result from Worksheet B, Item 9. Otherwise, enter the result from Worksheet A, Item 5.

2. Acceptance of Responsibility (See Chapter Three, Part E)

Enter the applicable reduction of 2 or 3 levels. If no adjustment is applicable, enter "0".

3. Offense Level Total (Item 1 less Item 2)**4. Criminal History Category** (From Worksheet A or C)

Enter the result from Worksheet C, Item 8, unless the defendant has no criminal history, and as directed at the bottom of Worksheet A, no Worksheet C is used and "I" is entered here.

5. Terrorism; Career Offender; Criminal Livelihood; Armed Career Criminal; Repeat and Dangerous Sex Offender (See Chapter Three, Part A, and Chapter Four, Part B)**a. Offense Level Total**

If the provision for Career Offender (§4B1.1), Criminal Livelihood (§4B1.3), Armed Career Criminal (§4B1.4), or Repeat and Dangerous Sex Offender (§4B1.5) results in an offense level total higher than Item 3, enter the offense level total. Otherwise, enter "N/A".

b. Criminal History Category

If the provision for Terrorism (§3A1.4), Career Offender (§4B1.1), Armed Career Criminal (§4B1.4), or Repeat and Dangerous Sex Offender (§4B1.5) results in a criminal history category higher than Item 4, enter the applicable criminal history category. Otherwise, enter "N/A".

6. Guideline Range from Sentencing Table

Enter the applicable guideline range from Chapter Five, Part A, in months.

7. Restricted Guideline Range (See Chapter Five, Part G)

If the statutorily authorized maximum sentence or the statutorily required minimum sentence restricts the guideline range (Item 6) (see §§5G1.1 and 5G1.2), enter either the restricted guideline range or any statutory maximum or minimum penalty that would modify the guideline range. Otherwise, enter "N/A".

☐

Check here if §5C1.2 (Limitation on Applicability of Statutory Minimum Penalties in Certain Cases) and 18 U.S.C. § 3553(e) – "The Safety Valve" – are applicable.

8. Undischarged Term of Imprisonment; Anticipated State Term of Imprisonment (See §5G1.3)☐

If the defendant is subject to an undischarged term of imprisonment, or an anticipated state term of imprisonment, check this box. Below list the undischarged/anticipated term(s), the applicable section of §5G1.3 and its direction or guidance as to whether the instant federal sentence is to be imposed to run concurrently or consecutively to the undischarged/anticipated term(s), and any sentence adjustment.

Worksheet D — Determining the Sentence [Page 2 of 4]Defendant Brett J. Yenior

Docket Number _____

9. Sentencing Options (See Chapter Five, Sentencing Table and §§5B1.1(a) and 5C1.1)

Check the applicable box that corresponds to the Guideline Range entered in Item 6 or Item 7, if applicable.

Zone A (See §§5B1.1(a)(1) & 5C1.1(a) & (b))☐

If checked, the following options are available:

- Fine (See §§5C1.1(b) & 5E1.2(a))
- “Straight” Probation (See §§5B1.1(a)(1) & 5C1.1(b))
- Imprisonment (See §5C1.1(a) & (c)(1))

Zone B (See §§5B1.1(a)(2) & 5C1.1(a) & (c))☐

If checked, the minimum term may be satisfied by:

- Imprisonment (See §5C1.1(a) & (c)(2))
- Imprisonment of **at least one month plus supervised release** with a condition that substitutes community confinement or home detention for imprisonment (See §5C1.1(c)(2))
- Probation with a condition that substitutes intermittent confinement, community confinement, or home detention for imprisonment (See §§5B1.1(a)(2) and 5C1.1(c)(3))

Zone C (See §5C1.1(a) & (d))☐

If checked, the minimum term may be satisfied by:

- Imprisonment (See §5C1.1(a) & (d)(1))
- Imprisonment of **at least one-half of the minimum term plus supervised release** with a condition that substitutes community confinement or home detention for imprisonment (See §5C1.1(d)(2))

Zone D (See §5C1.1(a) & (f))☒

If checked, the minimum term is to be satisfied by a sentence of imprisonment

10. Length of Term of Probation (See §5B1.2)

If probation is imposed, the guideline for the length of such term of probation is: (Check the applicable box)

☐

At least one year, but not more than five years if the offense level total is 6 or greater.

☐

No more than three years if the offense level total is 5 or less.

Worksheet D — Determining the Sentence [Page 3 of 4]Defendant Brett J. Yenior

Docket Number _____

11. Supervised Release (See §§5D1.1 and 5D1.2)**a. Imposition of a Term of Supervised Release:**

Ordered because required by statute (See §5D1.1(a)(1)).



Ordered because a sentence of imprisonment of more than one year is imposed (See §5D1.1(a)(2)).

Is **not** ordered although a sentence of more than one year is imposed, because it is not required by statute **and** the defendant likely will be deported after imprisonment (See §5D1.1(c)).

Ordered because it may be ordered in any other case (See §5D1.1(b)).

b. Length of Term of Supervised Release

Check the Class of the Offense:



Class A or B Felony: Two to Five Year Term (See §5D1.2(a)(1))



Class C or D Felony: One to Three Year Term (See §5D1.2(a)(2))



Class E Felony or Class A Misdemeanor: One Year Term (See §5D1.2(a)(3))



If a statutorily required mandatory minimum term of supervised release for the offense impacts the guideline range for the applicable Class of Offense above, also check this box, and list the statutory minimum term (See §5D1.2(c)):

5 years mandatory minimum term of supervised release

If an offense in 18 U.S.C. § 2332b(g)(5)(B) that resulted in, or created a foreseeable risk of, death or serious bodily injury to another person; or if a sex offense, the term of supervised release will not be less than the minimum term established above, and may be up to life (See §5D1.2(b)).

Policy Statement: If a sex offense, the *statutory maximum term* of supervised release is recommended.**12. Restitution** (See §5E1.1)**a. If restitution is applicable, enter the amount. Otherwise enter "N/A" and the reason:**The government has not identified any victims at this point.**b. Enter whether restitution is statutorily mandatory or discretionary:**If the government identifies a victim and the victim claims restitution, it is mandatory.**c. Enter whether restitution is by an order of restitution, or *solely* as a condition of supervision. Enter the authorizing statute:**

Worksheet D — Determining the Sentence [Page 4 of 4]Defendant Brett J. Yenior

Docket Number _____

13. Fines (The Guideline Range for Fines for Individual Defendants) (See §5E1.2)**a. Special Fine Provisions****Minimum****Maximum**☐

Check box if any of the counts of conviction is for a statute with a special fine provision. (This **does not** include the general fine provisions of 18 USC § 3571(b)(2) & (d)).

Enter the sum of statutory maximum fines for all such counts.

\$

b. Fine Table (§5E1.2(c)(3))

Enter the minimum and maximum fines.

\$ 20,000

\$ 200,000

c. Fine Guideline Range

(Determined by the minimum of the Fine Table (Item 15(b)) and the greater maximum above (Item 15(a) or 15(b))).

\$ 20,000

\$ 200,000

d. Ability to Pay☐

Check this box if the defendant does not have an ability to pay.

14. Special Assessments for Individual Defendants (See §5E1.3)

Enter the total amount of the statutory special assessments required for all counts of conviction:

- \$100 for each felony count of conviction.
- \$25 for each Class A misdemeanor count of conviction.
- While not subject to guideline sentencing, the special assessments for a Class B misdemeanor, and a Class C misdemeanor or infraction are \$10 and \$5 per count, respectively.

TOTAL:

\$ 100

15. Factors That May Warrant a Departure (See §1B1.1(b))

Consider Chapter Five, Part H (Specific Offender Characteristics) and Part K (Departures), and other policy statements and commentary in the *Guidelines Manual* that might warrant consideration in sentencing. (See also the "List of Departure Provisions" included in the *Guidelines Manual* after the Index).

16. Factors That May Warrant a Variance (See §1B1.1(c))

Consider the applicable factors in 18 U.S.C. § 3553(a) taken as a whole.

Completed by Jules M. DePorreDate 9/1/17